

Maureen Fitzgerald

**S & L Vitamins v. Australian Gold
05-CV-1217**

Australian Gold's Trial Exhibits In Evidence

| | |
|-------------------------|-----------|
| COURT'S | |
| EXHIBIT NO. | 1 |
| IDENTIFICATION/EVIDENCE | |
| DOCKET NO. | |
| DATE: | 1/21 1:30 |

| Defendant's Exhibit # | Description |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E | January 15, 2004 letter from Ice Miller to Body Source (Hartlieb Dep. Ex. 6). |
| H | January 28, 2004 letter from Ice Miller to Coleman Law Firm (Hartlieb Dep. Ex. 9). |
| O | Invoices from distributors to Yucatan (Sheehan Dep. Ex. 3) (YUC00383-YUC00417). |
| P | S&L Vitamins, Inc. 2000 Tax Return (Mercadante Dep. Ex. 1). |
| Q | S&L Vitamins, Inc. 2001 Tax Return (Mercadante Dep. Ex. 2). |
| R | S&L Vitamins, Inc. 2002 Tax Returns (Mercadante Dep. Ex. 3). |
| S | S&L Vitamins, Inc. 2003 Tax Returns (Mercadante Dep. Ex. 4). |
| T | S&L Vitamins, Inc. 2004 Tax Returns (Mercadante Dep. Ex. 5). |
| GG | Invoice to Body Source UK Ltd. (Mercadante Dep. Ex. 19). |
| HH | Yahoo Small Business Store Manager printout (Mercadante Dep. Ex. 20). |
| KK | Cancelled checks (Mercadante Dep. Ex. 25). |
| UU | Distributor List (AG0013186-AG0013187). |
| AAA | Australian Gold and Swedish Beauty Distributorship Agreement with Heartland Tanning Supplies (AG0013104-AG0013129). |
| MMM | March 30, 2004 letter from Ice Miller to ETS distributors (AG0008380-AG0008381). |
| TTT | Stay Tan North Distributor Response Form |
| UUU | Patent and Trademark Office trademark registrations for Australian Gold's trademarks as set forth in Exhibit A of the Second Amended Answer, Affirmative and Other Defenses and Amended Counterclaims and Amended Third Party Complaint. |
| BBBB | Australian Gold Power of Choice Chart (AG0013032). |

2/2/09
confirmation →

| Defendant's Exhibit # | Description |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CCCC | 2007 Swedish Beauty 2007 Right for You Product Chart (AG0013033). |
| ✓ JJJJ | Invoices and documents obtained from Stay Tan North. (STN0000001-STN0000089) |
| ✓ LLLL | Records received from UPS produced in response to the Subpoena Duces Tecum served by Australian Gold - as limited by Court. |
| PPPP | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between ETS, Inc. and Four Seasons Sales & Service, Inc. (effective 2001-2003) |
| QQQQ | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between Australian Gold, Inc. and Four Seasons Sales & Service, Inc. (effective 2006-2009) and Addendum to Distributorship Agreement |
| RRRR | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between ETS, Inc. and Future Industries of America, Inc. (effective 2003-2006) |
| SSSS | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between Australian Gold, Inc. and Future Industries of America, Inc. (effective 2006-2009) and Addendum to Distributorship Agreement |
| TTTT | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between ETS, Inc. and Heartland Tanning (effective 2003-2006) |
| VVVV | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between ETS, Inc. and Raley's, Inc., (effective 2003-2006) |
| ✓ WWWW | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between Australian Gold, Inc. and Raley's, Inc., (effective 2006-2009) and Addendum to Distributorship Agreement |
| XXXX | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between ETS, Inc. and Stay Tan, Inc. (effective 2003-2006) |
| YYYY | Australian Gold and Swedish Beauty Distributorship Agreement Non-Exclusive-Domestic-Multi Year between Australian Gold, Inc. and Stay Tan, Inc. (effective 2006-2009) |
| ✓ ZZZZ | Australian Gold and Swedish Beauty Subdistributorship Agreement Non-Exclusive-Domestic-Single-Year between Stay Tan, Inc. and Stay |

| Defendant's Exhibit # | Description |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| | Tan North (effective 2007-2008) |
| AAAAA | January 18, 2008 Website Copy of www.thesupplenet.com . (AG0013188) |
| EEEEEE | Swedish Beauty Stunning Tanning Lotion, 8.5 fl. oz. bottle |
| GGGGG | Australian Gold Bronzing Fire Glaze Tanning Lotion, 8.5 fl. oz. |
| HHHHH | Australian Gold Infamous Tanning Lotion, 8.5 fl. oz. |
| IIIII | Australian Gold Crystal Tanning Lotion, 8.5 fl. oz. with Australian Gold Forever After All Day Moisturizer, sample packet attached |
| JJJJJ | Australian Gold - Certificate of Ingredient (Mercadante Dep. Ex. 9 - 1/08/09). |
| KKKKK | Australian Gold - Certificate of Ingredient (Mercadante Dep. Ex. 10 - 1/08/09). |
| LLLLL | S&L Vitamins Invoice of Sales Overseas (Mercadante Dep. Ex. 2 - 1/08/09). |
| MMMMM | Invoice to S&L's Lithuania Customer (Mercadante Dep. Ex. 5 - 1/08/09). |
| NNNNN | Invoice from S&L Vitamins to Sunfita in Lithuania (Mercadante Dep. Ex. 6 - 1/08/09). |
| OOOOO | Invoice from S&L Vitamins to Sunfita in Lithuania (Mercadante Dep. Ex. 7 - 1/08/09). |
| PPPPP | Invoice from S&L Vitamins to Sunfita in Lithuania (Mercadante Dep. Ex. 8 - 1/08/09). |
| SSSSS | Larry Sagarin Email string (Mercadante Dep. Ex. 4 - 1/08/09). |
| TTTTT | Yahoo Small Business Merchant Solutions. (Mercadante Dep. Ex. 11 - 1/08/09). |
| UUUUU | S&L Vitamins, Inc., Income Tax Returns for 2005 |
| VVVVV | 2008 Dome Notebook |
| WWWWW | 2009 Dome Notebook |
| XXXXX | Yahoo Small Business Emails |
| YYYYY | Stipulated Final Judgment and Permanent Injunction against Yucatan Inc., and Danny Sheehan |

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

S&L VITAMINS, INC.

-V-

CV05-1217 (JS)

WITNESS AND EXHIBIT LISTS

AUSTRALIAN GOLD, INC.

(plus counterclaim and 3rd party action)

-----X

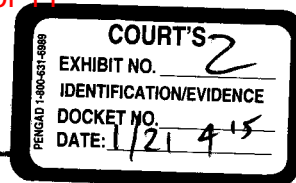
PLAINTIFF'S WITNESSES:
NONE

PLAINTIFF'S EXHIBITS IN EVIDENCE:

- ✓ 2- LETTER DATED 1/29/2004 FROM MR. COLEMAN TO MR. MATTHEWS
- 4- AUSTRALIAN GOLD'S RESPONSES TO FIRST SET OF INTERROGATORIES
DATED 1/20/2006

DEFENDANT'S WITNESSES:

DEFENDANT'S EXHIBITS IN EVIDENCE:
SEE ATTACHMENT



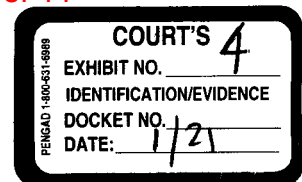
Regarding questions # 7 & # 8, on
Exhibit A sheets:

Must we respond yes or no to
each product or can we state
yes to the following and no to
all others?

| | |
|-----------------------|-------------------------|
| PENGAD 1-800-431-6888 | COURT'S |
| | EXHIBIT NO. <u>3</u> |
| | IDENTIFICATION/EVIDENCE |
| | DOCKET NO. |
| DATE: <u>1/21/09</u> | |

The jury has reached a verdict

Maurice Fitzgerald



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
S&L VITAMINS, INC.,

Plaintiff,

-against-

AUSTRALIAN GOLD, INC.,

Defendant.

VERDICT FORM

05-CV-1217 (JS) (MLO)

-----X

TORTIOUS INTERFERENCE WITH CONTRACT

1. Were there contracts between Australian Gold and its distributors or subdistributors that prohibited its distributors or subdistributors from selling Australian Gold Products to anyone other than a retail tanning salon?

Yes ☒

No ☐

If your answer to this question is No, proceed to question 7.
If your answer to this question is Yes, proceed to the next question.

2. Did S&L know of the existence of the contracts between Australian Gold and its distributors or subdistributors referred to in (1) above?

Yes ☒

No ☐

If your answer to this question is No, proceed to question 7.
If your answer to this question is Yes, proceed to the next question.

3. Did Australian Gold's distributors or subdistributors breach their contracts with Australian Gold by selling Australian Gold Products to S&L or any person acting on behalf of S&L?

Yes ✓

No _____

If your answer to this question is No, proceed to question 7.
If your answer to this question is Yes, proceed to the next question.

4. Did S&L perform an action that was a substantial factor in inducing Australian Gold's distributors or subdistributors to breach their contracts with Australian Gold?

Yes ✓

No _____

If your answer to this question is No, proceed to question 7.
If your answer to this question is Yes, proceed to the next question.

5. Did S&L act with the intent to cause Australian Gold's distributors or subdistributors to breach their contracts?

Yes ✓

No _____

If your answer to this question is No, proceed to question 7.
If your answer to this question is Yes, proceed to the next question.

6. State the amount of Australian Gold's damages, if any, sustained as a result of S&L's conduct.

Actual Damages: \$ 3,000,000

Three million

TRADEMARK INFRINGEMENT

7. Did S&L use Australian Gold's trademarks, set forth in the list attached to this verdict sheet as Exhibit A, in commerce in connection with the sale, offering for sale, distribution, or advertising of goods?

Answer "Yes" or "No" on Exhibit A as to each trademark.

If your answer to this question is No, proceed no further and report to the Court. If your answer to this question is Yes, proceed to the next question.

8. Is S&L's use of Defendant's Australian Gold's trademarks likely to cause confusion, mistake, or to deceive consumers as to (a) the affiliation, connection or association of S&L with Australian Gold; or (b) Australian Gold's approval of S&L's commercial activities, relating to the sale of Australian Gold Products on the internet?

Answer "Yes" or "No" on Exhibit A as to each trademark.

If your answer to this question is No, proceed no further and report to the Court. If your answer to this question is Yes, proceed to the next question.

9. State the amount of the AG's damages, if any, sustained as a result of S&L's conduct as to each trademark on Exhibit A you find to have been infringed in question (13).

Actual Damages: \$3,000,000
Three million

EXHIBIT A

| <u>Product</u> | <u>Question 7:</u> Did S&L use Australian Gold's trademarks, set forth in the list attached to this verdict sheet as Exhibit A, in commerce in connection with the sale, offering for sale, distribution, or advertising of goods? | <u>Question 8:</u> Is S&L's use of Defendant's Australian Gold's trademarks likely to cause confusion, mistake, or to deceive consumers as to (a) the affiliation, connection or association of S&L with Australian Gold; or (b) Australian Gold's approval of S&L's commercial activities, relating to the sale of Australian Gold Products on the internet? |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Australian Gold | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| Swedish Beauty | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| Carribean Gold | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| Amaretto | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Beach in a Bottle | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Blazin' | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Bronzing Fire Glaze | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| Browning Fury | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Chocolate Indulgence | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Chocolate Temptation | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| Dangerously Dark | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Dark Fire | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Fast Action | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Fast Brown | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Frosted Hemp | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Golden Bronzing Glaze | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Golden Glaze | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Golden Tingling Glaze | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Hot Amaretto | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Hot! | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Iced Crème | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Intimidation | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |

EXHIBIT A

| <u>Product</u> | <u>Question 7</u> : Did S&L use Australian Gold's trademarks, set forth in the list attached to this verdict sheet as Exhibit A, in commerce in connection with the sale, offering for sale, distribution, or advertising of goods? | <u>Question 8</u> : Is S&L's use of Defendant's Australian Gold's trademarks likely to cause confusion, mistake, or to deceive consumers as to (a) the affiliation, connection or association of S&L with Australian Gold; or (b) Australian Gold's approval of S&L's commercial activities, relating to the sale of Australian Gold Products on the internet? |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Safire | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Sinful | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Smokin' | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Smooth Softie | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Swedish Bronzing Crème | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Swedish Intensifier | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Thrust | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Wild | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| You Wish! | Yes <input type="checkbox"/> No <input type="checkbox"/> | Yes <input type="checkbox"/> No <input type="checkbox"/> |

Maura Fitzgerald 1/21/09